

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 617

**Introduced by Senator Evans
(Principal coauthor: Senator DeSaulnier)**

February 22, 2013

An act to amend Sections 21060.5, 21068, 21080.5, 21083.9, 21092, 21092.2, 21092.3, 21100, 21108, 21152, and 21161 of, to amend, repeal, and add Section 21167.6 of, to add and repeal Section 21167.6.2 of, and to repeal Sections 21080.01, 21080.02, 21080.03, and 21080.04 of, the Public Resources Code, relating to the California Environmental Quality Act.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Evans. California Environmental Quality Act.

(1) The California Environmental Quality Act (~~CEQA~~), *referred to as CEQA* requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (~~EIR~~), *referred to as an EIR* on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA authorizes the Secretary of the Natural Resources Agency to certify a regulatory program that meets specified requirements. CEQA provides that written documentation required by those certified regulatory programs may be submitted in lieu of an EIR. CEQA requires

an administering agency to file with the secretary a notice of decision made pursuant to the certified regulatory program, which is required to be available for public inspection. CEQA requires a lead agency to call a scoping meeting for specified projects and provide a notice of the meeting to specified entities. CEQA requires the lead agency or a project proponent to file a notice of approval or determination with *the* Office of Planning and Research if the lead agency is a state agency or with the county clerk if the lead agency is a local agency. CEQA requires a public agency that has completed an EIR to file with the Office of Planning and Research a notice of completion.

CEQA requires a lead agency determining that an EIR is required for a project to send a notice of that determination to specified public agencies. CEQA requires a lead agency preparing an EIR, a negative declaration, or making a specified determination regarding a subsequent project to provide a public notice within a reasonable time period before the certification of the EIR, or the adoption of a negative declaration, or making the specified determination. CEQA requires those notices to be posted in the office of the county clerk in each county in which the project is located and requires the notices to remain posted for 30 days. CEQA requires the county clerk to post the notice within 24 hours of receipt.

This bill would additionally require the above mentioned notices to be filed with both the Office of Planning and Research and the county clerk and be posted by *the* county clerk for public review. The bill would require the county clerk to post the notices within one business day, as defined, of receipt and stamp on the notice the date on which the notices were actually posted. By expanding the services provided by the lead agency and the county clerk, this bill would impose a state-mandated local program. The bill would require the county clerk to post the notices for at least 30 days. The bill would require the Office of Planning and Research to post the notices on a publicly available online database established and maintained by the office. The bill would require the office to stamp the notices with the date on which the notices were actually posted for online review and would require the notices to be posted for at least 30 days. The bill would authorize the office to charge an administrative fee not to exceed \$10 per notice filed. The bill would specify that a time period or limitation period specified by CEQA does not commence until the notice is actually posted for public review by the county clerk or is available in the online database, whichever is

later. The bill would require the notice of determination to be filed solely by the lead agency.

(2) CEQA authorizes, for a project that is determined by a state agency to be exempted from the requirements of CEQA, a state agency or a project proponent to file a notice of determination with the Office of Planning and Research. CEQA authorizes, for a project that is determined by a local agency to be exempted from the requirements of CEQA, a local agency or a project proponent to file a notice of determination with the county clerk of the county in which the project is located.

This bill would require that notice of determination be filed with both the Office of Planning and Research and the county clerk. By requiring a county clerk to receive and post that notice of determination filed by a state agency, this bill would impose a state-mandated local program. The bill would provide that notice of determination be filed by the lead agency only.

(3) This bill would require the Office of Planning and Research and the county clerk, after the posting of the notices filed with them, to return the notice to the filing agency with a notation of the period the notice was posted. By requiring a county clerk to return the notice, this bill would impose a state-mandated local program.

(4) CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require, until January 1, 2017, the lead agency, at the request of a project applicant, to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. *The bill would condition, upon the consent of a lead agency that is a state agency, the application to state agency of the concurrent preparation of the record of proceedings.*

(5) CEQA defines "environment" and "significant effect on the environment" for its purposes. CEQA requires the EIR to include a detailed statement setting forth specified facts.

This bill would revise those definitions, as specified. This bill would additionally require the lead agency to include in the EIR a detailed

statement on any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions. Because the lead agency would be required to undertake this additional consideration, this bill would impose a state-mandated local program.

(6) The bill would repeal certain exemptions from the requirements of CEQA related to the California Men's Colony West Facility, a prison ~~facilities~~ facility at or in the vicinity of Corcoran, a certain prison facility in the County of King, and the Napa Valley Wine Train.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21060.5 of the Public Resources Code
2 is amended to read:

3 21060.5. "Environment" means the physical conditions that
4 exist within the area that will be affected by a proposed project,
5 including land, air, water, minerals, flora, fauna, noise, objects of
6 historic or aesthetic significance, as well as the health and safety
7 of people affected by the physical conditions at the location of a
8 project.

9 SEC. 2. Section 21068 of the Public Resources Code is
10 amended to read:

11 21068. "Significant effect on the environment" means a
12 substantial, or potentially substantial, adverse change in the
13 environment. "Significant effect on the environment" includes
14 exposure of people, either directly or indirectly, to substantial
15 existing or reasonably foreseeable natural hazard or adverse
16 condition of the environment.

17 SEC. 3. Section 21080.01 of the Public Resources Code is
18 repealed.

19 SEC. 4. Section 21080.02 of the Public Resources Code is
20 repealed.

1 SEC. 5. Section 21080.03 of the Public Resources Code is
2 repealed.

3 SEC. 6. Section 21080.04 of the Public Resources Code is
4 repealed.

5 SEC. 7. Section 21080.5 of the Public Resources Code is
6 amended to read:

7 21080.5. (a) Except as provided in Section 21158.1, when the
8 regulatory program of a state agency requires a plan or other written
9 documentation containing environmental information and
10 complying with paragraph (3) of subdivision (d) to be submitted
11 in support of an activity listed in subdivision (b), the plan or other
12 written documentation may be submitted in lieu of the
13 environmental impact report required by this division if the
14 Secretary of the Natural Resources Agency has certified the
15 regulatory program pursuant to this section.

16 (b) This section applies only to regulatory programs or portions
17 thereof that involve either of the following:

18 (1) The issuance to a person of a lease, permit, license,
19 certificate, or other entitlement for use.

20 (2) The adoption or approval of standards, rules, regulations,
21 or plans for use in the regulatory program.

22 (c) A regulatory program certified pursuant to this section is
23 exempt from Chapter 3 (commencing with Section 21100), Chapter
24 4 (commencing with Section 21150), and Section 21167, except
25 as provided in Article 2 (commencing with Section 21157) of
26 Chapter 4.5.

27 (d) To qualify for certification pursuant to this section, a
28 regulatory program shall require the utilization of an
29 interdisciplinary approach that will ensure the integrated use of
30 the natural and social sciences in decisionmaking and that shall
31 meet all of the following criteria:

32 (1) The enabling legislation of the regulatory program does both
33 of the following:

34 (A) Includes protection of the environment among its principal
35 purposes.

36 (B) Contains authority for the administering agency to adopt
37 rules and regulations for the protection of the environment, guided
38 by standards set forth in the enabling legislation.

39 (2) The rules and regulations adopted by the administering
40 agency for the regulatory program do all of the following:

1 (A) Require that an activity will not be approved or adopted as
2 proposed if there are feasible alternatives or feasible mitigation
3 measures available that would substantially lessen a significant
4 adverse effect that the activity may have on the environment.

5 (B) Include guidelines for the orderly evaluation of proposed
6 activities and the preparation of the plan or other written
7 documentation in a manner consistent with the environmental
8 protection purposes of the regulatory program.

9 (C) Require the administering agency to consult with all public
10 agencies that have jurisdiction, by law, with respect to the proposed
11 activity.

12 (D) Require that final action on the proposed activity include
13 the written responses of the issuing authority to significant
14 environmental points raised during the evaluation process.

15 (E) Require the filing of a notice of the decision by the
16 administering agency on the proposed activity pursuant to Section
17 21092.3.

18 (F) Require notice of the filing of the plan or other written
19 documentation to be posted pursuant to Section 21092.3 and made
20 to the public and to a person who requests, in writing, notification.
21 The notification shall be made in a manner that will provide the
22 public or a person requesting notification with sufficient time to
23 review and comment on the filing.

24 (3) The plan or other written documentation required by the
25 regulatory program does both of the following:

26 (A) Includes a description of the proposed activity with
27 alternatives to the activity, and mitigation measures to minimize
28 any significant adverse effect on the environment of the activity.

29 (B) Is available for a reasonable time for review and comment
30 by other public agencies and the general public.

31 (e) (1) The Secretary of the Natural Resources Agency shall
32 certify a regulatory program that the secretary determines meets
33 all the qualifications for certification set forth in this section, and
34 withdraw certification on determination that the regulatory program
35 has been altered so that it no longer meets those qualifications.
36 Certification and withdrawal of certification shall occur only after
37 compliance with Chapter 3.5 (commencing with Section 11340)
38 of Part 1 of Division 3 of Title 2 of the Government Code.

39 (2) In determining whether or not a regulatory program meets
40 the qualifications for certification set forth in this section, the

1 inquiry of the secretary shall extend only to the question of whether
2 the regulatory program meets the generic requirements of
3 subdivision (d). The inquiry may not extend to individual decisions
4 to be reached under the regulatory program, including the nature
5 of specific alternatives or mitigation measures that might be
6 proposed to lessen any significant adverse effect on the
7 environment of the activity.

8 (3) If the secretary determines that the regulatory program
9 submitted for certification does not meet the qualifications for
10 certification set forth in this section, the secretary shall adopt
11 findings setting forth the reasons for the determination.

12 (f) After a regulatory program has been certified pursuant to
13 this section, a proposed change in the program that could affect
14 compliance with the qualifications for certification specified in
15 subdivision (d) may be submitted to the Secretary of the Natural
16 Resources Agency for review and comment. The scope of the
17 secretary's review shall extend only to the question of whether the
18 regulatory program meets the generic requirements of subdivision
19 (d). The review may not extend to individual decisions to be
20 reached under the regulatory program, including specific
21 alternatives or mitigation measures that might be proposed to lessen
22 any significant adverse effect on the environment of the activity.
23 The secretary shall have 30 days from the date of receipt of the
24 proposed change to notify the state agency whether the proposed
25 change will alter the regulatory program so that it no longer meets
26 the qualification for certification established in this section and
27 will result in a withdrawal of certification as provided in this
28 section.

29 (g) An action or proceeding to attack, review, set aside, void,
30 or annul a determination or decision of a state agency approving
31 or adopting a proposed activity under a regulatory program that
32 has been certified pursuant to this section on the basis that the plan
33 or other written documentation prepared pursuant to paragraph (3)
34 of subdivision (d) does not comply with this section shall be
35 commenced not later than 30 days from the date of the posting of
36 notice of the approval or adoption of the activity pursuant to
37 Section 21092.3.

38 (h) (1) An action or proceeding to attack, review, set aside,
39 void, or annul a determination of the Secretary of the Natural
40 Resources Agency to certify a regulatory program pursuant to this

1 section on the basis that the regulatory program does not comply
2 with this section shall be commenced within 30 days from the date
3 of certification by the secretary.

4 (2) In an action brought pursuant to paragraph (1), the inquiry
5 shall extend only to whether there was a prejudicial abuse of
6 discretion by the secretary. Abuse of discretion is established if
7 the secretary has not proceeded in a manner required by law or if
8 the determination is not supported by substantial evidence.

9 (i) For purposes of this section, a county agricultural
10 commissioner is a state agency.

11 (j) For purposes of this section, an air quality management
12 district or air pollution control district is a state agency, except
13 that the approval, if any, by a district of a nonattainment area plan
14 is subject to this section only if, and to the extent that, the approval
15 adopts or amends rules or regulations.

16 (k) (1) The secretary, by July 1, 2004, shall develop a protocol
17 for reviewing the prospective application of certified regulatory
18 programs to evaluate the consistency of those programs with the
19 requirements of this division. Following the completion of the
20 development of the protocol, the secretary shall provide a report
21 to the Senate Committee on Environmental Quality and the
22 Assembly Committee on Natural Resources regarding the need
23 for a grant of additional statutory authority authorizing the secretary
24 to undertake a review of the certified regulatory programs.

25 (2) The secretary may update the protocol, and may update the
26 report provided to the legislative committees pursuant to paragraph
27 (1) and provide, in compliance with Section 9795 of the
28 Government Code, the updated report to those committees if
29 additional statutory authority is needed.

30 (3) The secretary shall provide a significant opportunity for
31 public participation in developing or updating the protocol
32 described in paragraph (1) or (2) including, but not limited to, at
33 least two public meetings with interested parties. A notice of each
34 meeting shall be provided at least 10 days prior to the meeting to
35 a person who files a written request for a notice with the agency
36 and to the Senate Committee on Environmental Quality and the
37 Assembly Committee on Natural Resources.

38 SEC. 8. Section 21083.9 of the Public Resources Code is
39 amended to read:

1 21083.9. (a) Notwithstanding Section 21080.4, 21104, or
2 21153, a lead agency shall ~~call~~ *conduct* at least one public scoping
3 meeting for either of the following:

4 (1) A proposed project that may affect highways or other
5 facilities under the jurisdiction of the Department of Transportation
6 if the meeting is requested by the department. The lead agency
7 shall call the scoping meeting as soon as possible, but not later
8 than 30 days after receiving the request from the Department of
9 Transportation.

10 (2) A project of statewide, regional, or areawide significance.

11 (b) The lead agency shall provide notice of at least one public
12 scoping meeting held pursuant to paragraph (2) of subdivision (a)
13 by posting a notice of meeting pursuant to Section 21092.3, and
14 providing copies of the notice to all of the following:

15 (1) A county, city, or tribal land that borders on a county or city
16 within which the project is located, unless otherwise designated
17 annually by agreement between the lead agency and the county,
18 city, or tribal government.

19 (2) A responsible agency.

20 (3) A public agency that has jurisdiction by law with respect to
21 the project.

22 (4) A transportation planning agency or public agency required
23 to be consulted pursuant to Section 21092.4.

24 (5) A public agency, organization, or individual who has filed
25 a written request for the notice.

26 (c) For a public agency, organization, or individual that is
27 required to be provided notice of a lead agency public meeting,
28 the requirement for notice of a scoping meeting pursuant to
29 subdivision (b) may be met by including the notice of a scoping
30 meeting in the public meeting notice.

31 (d) A public scoping meeting that is held in the city or county
32 within which the project is located pursuant to the federal National
33 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)
34 and the regulations adopted pursuant to that act shall be deemed
35 to satisfy the requirement that a public scoping meeting be held
36 for a project subject to paragraph (2) of subdivision (a) if the lead
37 agency meets the notice requirements of subdivision (b) or
38 ~~subdivision~~ (c).

39 (e) The referral of a proposed action to adopt or substantially
40 amend a general plan to a city or county pursuant to paragraph (1)

1 of subdivision (a) of Section 65352 of the Government Code may
2 be conducted concurrently with the public scoping meeting required
3 pursuant to this section, and the city or county may submit its
4 comments as provided pursuant to subdivision (b) of that section
5 at the public scoping meeting.

6 SEC. 9. Section 21092 of the Public Resources Code is
7 amended to read:

8 21092. (a) A lead agency that is preparing an environmental
9 impact report or a negative declaration or making a determination
10 pursuant to subdivision (c) of Section 21157.1 shall provide public
11 notice of that fact within a reasonable period of time prior to
12 certification of the environmental impact report, adoption of the
13 negative declaration, or making the determination pursuant to
14 subdivision (c) of Section 21157.1.

15 (b) (1) The notice shall specify the period during which
16 comments will be received on the draft environmental impact
17 report or negative declaration, and shall include the date, time, and
18 place of any public meetings or hearings on the proposed project,
19 a brief description of the proposed project and its location, the
20 significant effects on the environment, if any, anticipated as a result
21 of the project, the address where copies of the draft environmental
22 impact report or negative declaration, and all documents referenced
23 in the draft environmental impact report or negative declaration,
24 are available for review, and a description of how the draft
25 environmental impact report or negative declaration can be
26 provided in an electronic format.

27 (2) This section shall not be construed in any manner that results
28 in the invalidation of an action because of the alleged inadequacy
29 of the notice content if there has been substantial compliance with
30 the notice content requirements of this section.

31 (3) The notice required by this section shall be filed and posted
32 pursuant to Section 21092.3 and given to the last known name and
33 address of all organizations and individuals who have previously
34 requested notice, and shall also be given by at least one of the
35 following procedures:

36 (A) Publication, no fewer times than required by Section 6061
37 of the Government Code, by the public agency in a newspaper of
38 general circulation in the area affected by the proposed project. If
39 more than one area will be affected, the notice shall be published

1 in the newspaper of largest circulation from among the newspapers
2 of general circulation in those areas.

3 (B) Posting of notice by the lead agency on- and off-site in the
4 area where the project is to be located.

5 (C) Direct mailing to the owners and occupants of contiguous
6 property shown on the latest equalized assessment roll.

7 (c) For a project involving the burning of municipal wastes,
8 hazardous waste, or refuse-derived fuel, including, but not limited
9 to, tires, meeting the qualifications of subdivision (d), notice shall
10 be given to all organizations and individuals who have previously
11 requested notice and shall also be given by at least the procedures
12 specified in subparagraphs (A), (B), and (C) of paragraph (3) of
13 subdivision (b). In addition, notification shall be given by direct
14 mailing to the owners and occupants of property within one-fourth
15 of a mile of any parcel or parcels on which is located a project
16 subject to this subdivision.

17 (d) The notice requirements of subdivision (c) apply to both of
18 the following:

19 (1) The construction of a new facility.

20 (2) The expansion of an existing facility that burns hazardous
21 waste which would increase its permitted capacity by more than
22 10 percent. For purposes of this paragraph, the amount of expansion
23 of an existing facility shall be calculated by comparing the
24 proposed facility capacity with whichever of the following is
25 applicable:

26 (A) The facility capacity approved in the facility's hazardous
27 waste facilities permit pursuant to Section 25200 of the Health and
28 Safety Code or its grant of interim status pursuant to Section
29 25200.5 of the Health and Safety Code, or the facility capacity
30 authorized in any state or local agency permit allowing the
31 construction or operation of a facility for the burning of hazardous
32 waste, granted before January 1, 1990.

33 (B) The facility capacity authorized in the facility's original
34 hazardous waste facilities permit, grant of interim status, or any
35 state or local agency permit allowing the construction or operation
36 of a facility for the burning of hazardous waste, granted on or after
37 January 1, 1990.

38 (e) The notice requirements specified in subdivision (b) or (c)
39 shall not preclude a public agency from providing additional notice
40 by other means if the agency so desires, or from providing the

1 public notice required by this section at the same time and in the
2 same manner as public notice otherwise required by law for the
3 project.

4 SEC. 10. Section 21092.2 of the Public Resources Code is
5 amended to read:

6 21092.2. (a) The notices required pursuant to Sections 21080.4,
7 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be mailed
8 to every person who has filed a written request for notices with
9 either the clerk of the governing body or, if there is no governing
10 body, the director of the agency. If the agency offers to provide
11 the notices by email, upon filing a written request for notices, a
12 person may request that the notices be provided to him or her by
13 email. The request may also be filed with any other person
14 designated by the governing body or director to receive these
15 requests. The agency may require requests for notices to be
16 annually renewed. The public agency may charge a fee, except to
17 other public agencies, that is reasonably related to the costs of
18 providing this service.

19 (b) Subdivision (a) shall not be construed in any manner that
20 results in the invalidation of an action because of the failure of a
21 person to receive a requested notice, if there has been substantial
22 compliance with the requirements of this section.

23 (c) The notices required pursuant to Sections 21080.4 and 21161
24 shall be provided by the State Clearinghouse to any legislator in
25 whose district the project has an environmental impact, if the
26 legislator requests the notice and the State Clearinghouse has
27 received it.

28 SEC. 11. Section 21092.3 of the Public Resources Code is
29 amended to read:

30 21092.3. (a) The notices required pursuant to Sections 21080.4,
31 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be filed
32 with and posted for public review in the office of the county clerk
33 of each county in which the project will be located and shall remain
34 posted for a period of at least 30 days or the full duration of any
35 time period under this division that may commence upon the filing
36 of the notice, whichever is longer. The clerk shall, thereafter, return
37 the notice to the filing agency with a notation of the period it was
38 posted. The county clerk shall post the notices within one business
39 day of receipt and shall stamp on the notice the date on which it
40 was actually posted for public review.

(b) The notices required pursuant to Sections 21080.4, 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be filed with, and posted on, a publicly available, online database established and maintained by the Office of Planning and Research. The online database shall include the capability to view and download the notices in the form filed with the Office of Planning and Research. Notices filed in the online database shall be stamped by the Office of Planning and Research with the date on which they were actually posted for online review by the public, and shall remain electronically available in the database for a minimum of 10 years. The Office of Planning and Research shall retain the physical copy of the notice for at least 30 days or for the full duration of a time period required pursuant to this division that may commence upon the filing of the notice, whichever is longer. The Office of Planning and Research shall, thereafter, return the notice to the filing agency with a notation of the period it was posted. The Office of Planning and Research shall post the notices in its online database within one business day of receipt. The Office of Planning and Research may require the agency filing the notice to pay an administrative fee not to exceed ten dollars (\$10) per notice filed for the purposes of maintaining its online database and implementing its duties under this section. The agency filing the notice may recover its filing costs from the person specified in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings.

(c) Any time periods or limitation periods established under this division that are subject to the notices posted under this section shall not commence until the notice is actually posted for public review by the county clerk and in the online database maintained by the Office of Planning and Research. If the county clerk and the Office of Planning and Research posts the notice on different days, the time period shall run from the date of the later posting.

(d) For the purposes of this section, "business days" does not include Saturday, Sunday, or a day observed as a holiday by the state government.

SEC. 12. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the

1 environment. Whenever feasible, a standard format shall be used
2 for environmental impact reports.

3 (b) The environmental impact report shall include a detailed
4 statement setting forth all of the following:

5 (1) All significant effects on the environment of the proposed
6 project.

7 (2) In a separate section:

8 (A) Any significant effect on the environment that cannot be
9 avoided if the project is implemented.

10 (B) Any significant effect on the environment that would be
11 irreversible if the project is implemented.

12 (3) Mitigation measures proposed to minimize significant effects
13 on the environment, including, but not limited to, measures to
14 reduce the wasteful, inefficient, and unnecessary consumption of
15 energy.

16 (4) Alternatives to the proposed project.

17 (5) The growth-inducing impact of the proposed project.

18 (6) Any significant effects that may result from locating
19 development near, or attracting people to, existing or reasonably
20 foreseeable natural hazards or adverse environmental conditions.

21 (c) The report shall also contain a statement briefly indicating
22 the reasons for determining that various effects on the environment
23 of a project are not significant and consequently have not been
24 discussed in detail in the environmental impact report.

25 (d) For purposes of this section, any significant effect on the
26 environment shall be limited to substantial, or potentially
27 substantial, adverse changes in physical conditions which exist
28 within the area as defined in Section 21060.5.

29 (e) Previously approved land use documents, including, but not
30 limited to, general plans, specific plans, and local coastal plans,
31 may be used in cumulative impact analysis.

32 SEC. 13. Section 21108 of the Public Resources Code is
33 amended to read:

34 21108. (a) If a state agency approves or determines to carry
35 out a project that is subject to this division, the state agency shall
36 file notice of that approval or that determination with the Office
37 of Planning and Research and with the county clerk of each county
38 in which the project will be located. The notice shall identify the
39 person or persons in subdivision (b) or (c) of Section 21065, as
40 reflected in the agency's record of proceedings, and indicate the

1 determination of the state agency whether the project will, or will
2 not, have a significant effect on the environment and shall indicate
3 whether an environmental impact report has been prepared pursuant
4 to this division.

5 (b) If a state agency determines that a project is not subject to
6 this division pursuant to subdivision (b) of Section 21080 or
7 Section 21172, and the state agency approves or determines to
8 carry out the project, the state agency may file notice of the
9 determination with the county clerk of each county in which the
10 project will be located and the Office of Planning and Research.
11 A notice filed pursuant to this subdivision shall identify the person
12 or persons in subdivision (b) or (c) of Section 21065, as reflected
13 in the agency's record of proceedings. A notice filed pursuant to
14 this subdivision by a person specified in subdivision (b) or (c) of
15 Section 21065 shall have a certificate of determination attached
16 to it issued by the state agency responsible for making the
17 determination that the project is not subject to this division pursuant
18 to subdivision (b) of Section 21080 or pursuant to Section 21172.
19 The certificate of determination may be in the form of a certified
20 copy of an existing document or record of the state agency.

21 SEC. 14. Section 21152 of the Public Resources Code is
22 amended to read:

23 21152. (a) If a local agency approves or determines to carry
24 out a project that is subject to this division, the local agency shall
25 file notice of the approval or the determination within five working
26 days after the approval or determination becomes final, with the
27 county clerk of each county in which the project will be located
28 and with the Office of Planning and Research. The notice shall
29 identify the person or persons in subdivision (b) or (c) of Section
30 21065, as reflected in the agency's record of proceedings, and
31 indicate the determination of the local agency whether the project
32 will, or will not, have a significant effect on the environment and
33 shall indicate whether an environmental impact report has been
34 prepared pursuant to this division. The notice shall also include
35 certification that the final environmental impact report, if one was
36 prepared, together with comments and responses, is available to
37 the general public.

38 (b) If a local agency determines that a project is not subject to
39 this division pursuant to subdivision (b) of Section 21080 or
40 pursuant to Section 21172, and the local agency approves or

determines to carry out the project, the local agency may file a notice of the determination with the county clerk of each county in which the project will be located and the Office of Planning and Research. A notice filed pursuant to this subdivision shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

SEC. 15. Section 21161 of the Public Resources Code is amended to read:

21161. Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of that report to be filed with the county clerk of each county in which the project will be located and the Office of Planning and Research. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. The notice of completion shall identify the project location by latitude and longitude. Failure to file the notice required by this section shall not affect the validity of a project.

SEC. 16. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other law, in all actions or proceedings brought pursuant to Section 21167, except as provided for in Section 21167.6.2 or those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the

1 record of proceedings with the court and shall serve on the parties
2 notice that the record of proceedings has been certified and lodged
3 with the court. The parties shall pay any reasonable costs or fees
4 imposed for the preparation of the record of proceedings in
5 conformance with any law or rule of court.

6 (2) The plaintiff or petitioner may elect to prepare the record
7 of proceedings or the parties may agree to an alternative method
8 of preparation of the record of proceedings, subject to certification
9 of its accuracy by the public agency, within the time limit specified
10 in this subdivision.

11 (c) The time limit established by subdivision (b) may be
12 extended only upon the stipulation of all parties who have been
13 properly served in the action or proceeding or upon order of the
14 court. Extensions shall be liberally granted by the court when the
15 size of the record of proceedings renders infeasible compliance
16 with that time limit. There is no limit on the number of extensions
17 that may be granted by the court, but no single extension shall
18 exceed 60 days unless the court determines that a longer extension
19 is in the public interest.

20 (d) If the public agency fails to prepare and certify the record
21 within the time limit established in paragraph (1) of subdivision
22 (b), or any continuances of that time limit, the plaintiff or petitioner
23 may move for sanctions, and the court may, upon that motion,
24 grant appropriate sanctions.

25 (e) The record of proceedings shall include, but is not limited
26 to, all of the following items:

27 (1) All project application materials.

28 (2) All staff reports and related documents prepared by the
29 respondent public agency with respect to its compliance with the
30 substantive and procedural requirements of this division and with
31 respect to the action on the project.

32 (3) All staff reports and related documents prepared by the
33 respondent public agency and written testimony or documents
34 submitted by any person relevant to any findings or statement of
35 overriding considerations adopted by the respondent agency
36 pursuant to this division.

37 (4) Any transcript or minutes of the proceedings at which the
38 decisionmaking body of the respondent public agency heard
39 testimony on, or considered any environmental document on, the
40 project, and any transcript or minutes of proceedings before any

1 advisory body to the respondent public agency that were presented
2 to the decisionmaking body prior to action on the environmental
3 documents or on the project.

4 (5) All notices issued by the respondent public agency to comply
5 with this division or with any other law governing the processing
6 and approval of the project.

7 (6) All written comments received in response to, or in
8 connection with, environmental documents prepared for the project,
9 including responses to the notice of preparation.

10 (7) All written evidence or correspondence submitted to, or
11 transferred from, the respondent public agency with respect to
12 compliance with this division or with respect to the project.

13 (8) Any proposed decisions or findings submitted to the
14 decisionmaking body of the respondent public agency by its staff,
15 or the project proponent, project opponents, or other persons.

16 (9) The documentation of the final public agency decision,
17 including the final environmental impact report, mitigated negative
18 declaration, or negative declaration, and all documents, in addition
19 to those referenced in paragraph (3), cited or relied on in the
20 findings or in a statement of overriding considerations adopted
21 pursuant to this division.

22 (10) Any other written materials relevant to the respondent
23 public agency's compliance with this division or to its decision on
24 the merits of the project, including the initial study, any drafts of
25 any environmental document, or portions thereof, that have been
26 released for public review, and copies of studies or other documents
27 relied upon in any environmental document prepared for the project
28 and either made available to the public during the public review
29 period or included in the respondent public agency's files on the
30 project, and all internal agency communications, including staff
31 notes and memoranda related to the project or to compliance with
32 this division.

33 (11) The full written record before any inferior administrative
34 decisionmaking body whose decision was appealed to a superior
35 administrative decisionmaking body prior to the filing of litigation.

36 (f) In preparing the record of proceedings, the party preparing
37 the record shall strive to do so at reasonable cost in light of the
38 scope of the record.

39 (g) The clerk of the superior court shall prepare and certify the
40 clerk's transcript on appeal not later than 60 days from the date

1 that the notice designating the papers or records to be included in
2 the clerk's transcript was filed with the superior court, if the party
3 or parties pay any costs or fees for the preparation of the clerk's
4 transcript imposed in conformance with any law or rules of court.
5 Nothing in this subdivision precludes an election to proceed by
6 appendix, as provided in Rule 8.124 of the California Rules of
7 Court.

8 (h) Extensions of the period for the filing of any brief on appeal
9 may be allowed only by stipulation of the parties or by order of
10 the court for good cause shown. Extensions for the filing of a brief
11 on appeal shall be limited to one 30-day extension for the
12 preparation of an opening brief, and one 30-day extension for the
13 preparation of a responding brief, except that the court may grant
14 a longer extension or additional extensions if it determines that
15 there is a substantial likelihood of settlement that would avoid the
16 necessity of completing the appeal.

17 (i) At the completion of the filing of briefs on appeal, the
18 appellant shall notify the court of the completion of the filing of
19 briefs, whereupon the clerk of the reviewing court shall set the
20 appeal for hearing on the first available calendar date.

21 (j) This section shall remain in effect only until January 1, 2017,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2017, deletes or extends that date.

24 SEC. 17. Section 21167.6 is added to the Public Resources
25 Code, to read:

26 21167.6. Notwithstanding any other law, in all actions or
27 proceedings brought pursuant to Section 21167, except those
28 involving the Public Utilities Commission, all of the following
29 shall apply:

30 (a) At the time that the action or proceeding is filed, the plaintiff
31 or petitioner shall file a request that the respondent public agency
32 prepare the record of proceedings relating to the subject of the
33 action or proceeding. The request, together with the complaint or
34 petition, shall be served personally upon the public agency not
35 later than 10 business days from the date that the action or
36 proceeding was filed.

37 (b) (1) The public agency shall prepare and certify the record
38 of proceedings not later than 60 days from the date that the request
39 specified in subdivision (a) was served upon the public agency.
40 Upon certification, the public agency shall lodge a copy of the

1 record of proceedings with the court and shall serve on the parties
2 notice that the record of proceedings has been certified and lodged
3 with the court. The parties shall pay any reasonable costs or fees
4 imposed for the preparation of the record of proceedings in
5 conformance with any law or rule of court.

6 (2) The plaintiff or petitioner may elect to prepare the record
7 of proceedings or the parties may agree to an alternative method
8 of preparation of the record of proceedings, subject to certification
9 of its accuracy by the public agency, within the time limit specified
10 in this subdivision.

11 (c) The time limit established by subdivision (b) may be
12 extended only upon the stipulation of all parties who have been
13 properly served in the action or proceeding or upon order of the
14 court. Extensions shall be liberally granted by the court when the
15 size of the record of proceedings renders infeasible compliance
16 with that time limit. There is no limit on the number of extensions
17 that may be granted by the court, but no single extension shall
18 exceed 60 days unless the court determines that a longer extension
19 is in the public interest.

20 (d) If the public agency fails to prepare and certify the record
21 within the time limit established in paragraph (1) of subdivision
22 (b), or any continuances of that time limit, the plaintiff or petitioner
23 may move for sanctions, and the court may, upon that motion,
24 grant appropriate sanctions.

25 (e) The record of proceedings shall include, but is not limited
26 to, all of the following items:

27 (1) All project application materials.

28 (2) All staff reports and related documents prepared by the
29 respondent public agency with respect to its compliance with the
30 substantive and procedural requirements of this division and with
31 respect to the action on the project.

32 (3) All staff reports and related documents prepared by the
33 respondent public agency and written testimony or documents
34 submitted by any person relevant to any findings or statement of
35 overriding considerations adopted by the respondent agency
36 pursuant to this division.

37 (4) Any transcript or minutes of the proceedings at which the
38 decisionmaking body of the respondent public agency heard
39 testimony on, or considered any environmental document on, the
40 project, and any transcript or minutes of proceedings before any

1 advisory body to the respondent public agency that were presented
2 to the decisionmaking body prior to action on the environmental
3 documents or on the project.

4 (5) All notices issued by the respondent public agency to comply
5 with this division or with any other law governing the processing
6 and approval of the project.

7 (6) All written comments received in response to, or in
8 connection with, environmental documents prepared for the project,
9 including responses to the notice of preparation.

10 (7) All written evidence or correspondence submitted to, or
11 transferred from, the respondent public agency with respect to
12 compliance with this division or with respect to the project.

13 (8) Any proposed decisions or findings submitted to the
14 decisionmaking body of the respondent public agency by its staff,
15 or the project proponent, project opponents, or other persons.

16 (9) The documentation of the final public agency decision,
17 including the final environmental impact report, mitigated negative
18 declaration, or negative declaration, and all documents, in addition
19 to those referenced in paragraph (3), cited or relied on in the
20 findings or in a statement of overriding considerations adopted
21 pursuant to this division.

22 (10) Any other written materials relevant to the respondent
23 public agency's compliance with this division or to its decision on
24 the merits of the project, including the initial study, any drafts of
25 any environmental document, or portions thereof, that have been
26 released for public review, and copies of studies or other documents
27 relied upon in any environmental document prepared for the project
28 and either made available to the public during the public review
29 period or included in the respondent public agency's files on the
30 project, and all internal agency communications, including staff
31 notes and memoranda related to the project or to compliance with
32 this division.

33 (11) The full written record before any inferior administrative
34 decisionmaking body whose decision was appealed to a superior
35 administrative decisionmaking body prior to the filing of litigation.

36 (f) In preparing the record of proceedings, the party preparing
37 the record shall strive to do so at reasonable cost in light of the
38 scope of the record.

39 (g) The clerk of the superior court shall prepare and certify the
40 clerk's transcript on appeal not later than 60 days from the date

1 that the notice designating the papers or records to be included in
2 the clerk's transcript was filed with the superior court, if the party
3 or parties pay any costs or fees for the preparation of the clerk's
4 transcript imposed in conformance with any law or rules of court.
5 Nothing in this subdivision precludes an election to proceed by
6 appendix, as provided in Rule 8.124 of the California Rules of
7 Court.

8 (h) Extensions of the period for the filing of any brief on appeal
9 may be allowed only by stipulation of the parties or by order of
10 the court for good cause shown. Extensions for the filing of a brief
11 on appeal shall be limited to one 30-day extension for the
12 preparation of an opening brief, and one 30-day extension for the
13 preparation of a responding brief, except that the court may grant
14 a longer extension or additional extensions if it determines that
15 there is a substantial likelihood of settlement that would avoid the
16 necessity of completing the appeal.

17 (i) At the completion of the filing of briefs on appeal, the
18 appellant shall notify the court of the completion of the filing of
19 briefs, whereupon the clerk of the reviewing court shall set the
20 appeal for hearing on the first available calendar date.

21 (j) This section shall become operative on January 1, 2017.

22 SEC. 18. Section 21167.6.2 is added to the Public Resources
23 Code, to read:

24 21167.6.2. (a) *(1)* Notwithstanding Section 21167.6, for a
25 project described in subdivision (f), upon the written request of a
26 project applicant received no later than 30 days after the date that
27 a lead agency makes a determination pursuant to subdivision (a)
28 of Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing
29 with Section 21155), the lead agency shall prepare and certify the
30 record of proceedings in the following manner:

31 ~~(1)~~

32 (A) The lead agency for the project shall prepare the record of
33 proceedings pursuant to this division concurrently with the
34 administrative process.

35 ~~(2)~~

36 (B) All documents and other materials placed in the record of
37 proceedings that are not otherwise exempted from public disclosure
38 shall be posted on, and be downloadable from, an Internet Web
39 site maintained by the lead agency commencing with the date of
40 the release of the draft environmental document for a project

1 specified in subdivision (f). If the lead agency cannot maintain an
2 Internet Web site with the information required pursuant to this
3 section, the lead agency shall provide a link on the agency's
4 Internet Web site to that information.

5 ~~(3) Except as provided in subdivision (r) of Section 6254 of the~~
6 ~~Government Code, Section 6254.10 of the Government Code,~~
7 ~~Section 304 of the National Historic Preservation Act (16 U.S.C.~~
8 ~~Sec. 470w-3), or subdivision (d) of Section 15120 of Title 14 of~~
9 ~~the California Code of Regulations, the~~

10 (C) The lead agency shall make available to the public, in a
11 readily accessible electronic format, the draft environmental
12 document for a project specified in subdivision (f) and all other
13 documents submitted to, cited by, or relied on by, the lead agency
14 in the preparation of the draft environmental document for a project
15 specified in subdivision (f).

16 ~~(4)~~

17 (D) A document prepared by the lead agency or submitted by
18 the applicant after the date of the release of the draft environmental
19 document for a project specified in subdivision (f) that is a part of
20 the record of the proceedings shall be made available to the public
21 in a readily accessible electronic format within five business days
22 after the document is released or received by the lead agency.

23 ~~(5)~~

24 (E) The lead agency shall encourage written comments on the
25 project to be submitted in a readily accessible electronic format,
26 and shall make any comment available to the public in a readily
27 accessible electronic format within five days of its receipt.

28 ~~(6)~~

29 (F) Within seven business days after the receipt of any comment
30 that is not in an electronic format, the lead agency shall convert
31 that comment into a readily accessible electronic format and make
32 it available to the public in that format.

33 ~~(7)~~

34 (G) The lead agency shall certify the record of proceedings
35 within 30 days after the filing of the notice required pursuant to
36 Section 21108 or 21152.

37 (2) *This subdivision does not require the disclosure or posting*
38 *of a trade secret, as defined in Section 6254.7 of the Government*
39 *Code, information about the location of archaeological sites or*
40 *sacred lands, or other information that is subject to the exemption*

1 *from disclosures specified in Section 6254 of the Government*
2 *Code.*

3 (b) Any dispute regarding the record of proceedings shall be
4 resolved by the court in an action or proceeding brought pursuant
5 to Section 21167. The parties shall meet and confer in good-faith
6 effort to resolve any dispute before seeking resolution in court.

7 (c) The content of the record of proceedings shall be as specified
8 in subdivision (e) of Section 21167.6.

9 (d) Subdivisions (g) to (i), inclusive, of Section 21167.6 are
10 applicable to an appeal of a decision in an action or proceeding
11 brought pursuant to Section 21167.

12 (e) The negative declaration, mitigated negative declaration,
13 draft and final environmental impact report, or other environmental
14 document for a project specified in subdivision (f) shall include a
15 notice in no less than 12-point type stating the following:

16
17 “THIS NEGATIVE DECLARATION, MITIGATED
18 NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL
19 DOCUMENT IS SUBJECT TO SECTION 21167.6.2 OF THE
20 PUBLIC RESOURCES CODE, WHICH REQUIRES THE
21 RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE
22 PREPARED CONCURRENTLY WITH THE
23 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED
24 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE
25 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE,
26 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN
27 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE
28 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC
29 FORMAT.”

30
31 (f) This section applies to the record of proceedings for the
32 preparation of a negative declaration, mitigated negative
33 declaration, environmental impact report, or other environmental
34 document prepared for any of the following:

35 (1) A project determined to be of statewide, regional, or
36 areawide environmental significance pursuant to subdivision (d)
37 of Section 21083.

38 (2) A project subject to Section 21094.5 or Chapter 4.2
39 (commencing with Section 21155).

1 (3) (A) A project, other than one described in paragraphs (1)
2 and (2), for which the lead agency consents to prepare the record
3 of proceedings pursuant to this paragraph.

4 (B) The lead agency shall respond to a request by the project
5 applicant within 10 business days from the date that the request
6 pursuant to subdivision (a) is received by the lead agency.

7 (C) A project applicant and the lead agency may mutually agree,
8 in writing, to extend the time period for the lead agency to respond
9 pursuant to subparagraph (B), but they shall not extend that period
10 beyond the commencement of the public review period for the
11 proposed negative declaration, mitigated negative declaration, or
12 draft environmental impact report.

13 (D) The request to prepare a record of proceedings pursuant to
14 this paragraph shall be deemed denied if the lead agency fails to
15 respond within 10 business days of receiving the request or within
16 the time period agreed upon pursuant to subparagraph (C),
17 whichever ends later.

18 ~~(g) The project applicant shall reimburse the lead agency for~~
19 ~~the costs incurred in compliance with this section in a manner~~
20 ~~specified by the lead agency, and a plaintiff or petitioner in an~~
21 ~~action or proceeding filed pursuant to Section 21167, if any, is not~~
22 ~~required to pay these costs.~~

23 *(g) For a lead agency that is a state agency, the preparation of*
24 *the record of proceedings pursuant to this section applies if the*
25 *state agency consents to the preparation of the record of*
26 *proceedings pursuant to this section.*

27 *(h) The written request of the applicant submitted pursuant to*
28 *subdivision (a) shall include an agreement to pay all of the lead*
29 *agency's costs in preparing and certifying the record of*
30 *proceedings pursuant to this section and complying with the*
31 *requirements of this section in a manner specified by the lead*
32 *agency.*

33 ~~(h)~~
34 (i) The costs of preparing the record of proceedings pursuant
35 to this section and complying with the requirements of this section
36 are not recoverable costs pursuant to Section 1033 of the Code of
37 Civil Procedure.

38 (i)

1 (j) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2017, deletes or extends that date.

4 SEC. 19. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of Section
9 17556 of the Government Code.